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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	DOCKET FILE COPY ORIGINAL
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Petition of Bell Atlantic Telephone	)	**CC Docket No. 99-24**
Companies for Forbearance from Regulation	)	
as a Dominant Carrier in Delaware; Maryland	)	
Massachusetts; New Hampshire; New Jersey;	)	
New York; Pennsylvania; Rhode Island;	)	
Washington, D.C.; Vermont; and Virginia	)	
	)	

MCI WORLDCOM OPPOSITION

MCI WORLDCOM, INC.

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March 18, 1999

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MCI WORLDCOM OPPOSITION

I. Introduction and Summary

MCI WorldCom, Inc. (MCI WorldCom) hereby submits its opposition to the petition for forbearance filed by the Bell Atlantic Telephone Companies (Bell Atlantic) on January 20, 1999 in the above-captioned docket. Bell Atlantic seeks relief from the rate structure rules in Part 69 and the rate level rules in Part 61 for Bell Atlantic's special access services in twelve jurisdictions in the Bell Atlantic region: Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and the District of Columbia.[1]

The Commission need not, and should not, conduct a full-scale analysis of the special access market in these twelve jurisdictions. Instead, the Commission should act

[1]Petition at 2.

immediately to deny Bell Atlantic's petition on the grounds that the state-specific relief that Bell Atlantic seeks would be contrary to the public interest and thus fails to satisfy the Section 10(a)(3) public interest criterion. As the Commission has demonstrated by its recent request that parties update the record in the pricing flexibility phase of the access reform proceeding, the public interest is best served by addressing pricing flexibility issues on a national basis.

If the Commission does proceed to conduct a full-scale forbearance analysis addressing each of the three statutory criteria outlined in Section 10 of the Act, then it must find that Bell Atlantic's petition fails to satisfy these criteria. As shown below, the Commission's dominant carrier rules (1) remain necessary to ensure that Bell Atlantic is charging just, reasonable, and not unreasonably discriminatory rates; (2) remain necessary to protect consumers from paying rates that are not just and reasonable; and (3) are consistent with the public interest.

The Commission's dominant carrier rules remain necessary because Bell Atlantic continues to possess market power in the market for special access services in the twelve jurisdictions that are the subject of Bell Atlantic's petition. Contrary to Bell Atlantic's claims of widespread competition, the record shows that Bell Atlantic's special access customers have no alternative sources of supply on the vast majority of routes. Bell Atlantic thus continues to have the ability to "raise prices above competitive levels and

maintain that price for a significant period, reduce the quality of the relevant product or service, reduce innovation or restrict output profitably."[2]

The rules adopted in the expanded interconnection proceedings, particularly the density zone pricing provisions, were crafted precisely to address the early stages of competition that exist in Bell Atlantic's region -- limited competition on a few routes in the central business district of major cities. To the extent that special access competition has advanced beyond the point contemplated by the expanded interconnection orders, which is not the case in the twelve jurisdictions that are the subject of Bell Atlantic's petition, any changes to the dominant carrier rules should be considered in CC Docket No. 96-262, not on an ad hoc state-by-state basis.

II. Bell Atlantic's Petition Fails the Public Interest Test

Section 10 allows the Commission 12 months in which to deny a petition for forbearance for failure to meet the requirements of Section 10(a). The Commission should, however, reject Bell Atlantic's petition immediately for failing to satisfy the public interest test -- the third prong of Section 10(a) -- because the issues raised by Bell Atlantic are already being addressed in the pricing flexibility phase of the CC Docket No. 96-262 access reform proceeding.

It is well-established that the "choice between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the

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[2]See In the Matter of COMSAT Corporation, File No. 60-SAT-ISP-97, Order and Notice of Proposed Rulemaking, rel. April 28, 1998, at ¶67 (Comsat Order).

administrative agency."[3] The Commission has already decided to address the issues raised by Bell Atlantic's petition -- the extent to which dominant carrier rules may need to be modified in an environment of evolving competition -- in a general rulemaking. In fact, the Commission specifically asked, in the Access Reform Notice, whether "high capacity services, e.g. those special access services offered at speeds of DS1 or higher, should be removed immediately from price cap regulation."[4] And the Commission only recently gave interested parties, including Bell Atlantic, the opportunity to refresh the record in that proceeding.[5]

Given that the Commission has chosen to address special access pricing flexibility issues by rulemaking, it would not be in the public interest to proceed further with the ad hoc approach requested by Bell Atlantic. As the Commission has stated, when there are important consequences for the entire telecommunications industry, "the coordinated and comprehensive approach made possible by a rulemaking will reduce industry uncertainty, while ensuring the smoothest possible transition to any new rules that may be necessary."[6] The ad hoc state-specific relief that Bell Atlantic requests in its petition is obviously inconsistent with such a "coordinated and comprehensive approach."

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[3]SEC v. Chenery Corp., 332 U.S. 194, 203 (1947).

[4]Access Reform Notice at ¶153.

[5]Public Notice, FCC 98-256, October 5, 1998.

[6]In the Matter of AT&T Communications v. MCI Telecommunications Corp., Memorandum Opinion and Order, 7 FCC Rcd 807, 809 (1992).

On the rare occasions when the Commission has addressed pricing flexibility issues on an ad hoc basis, it has done so only when there was no general rulemaking underway and after finding, for example, "factors [that] generally distinguish the economic conditions existing in the New York City metropolitan area from other areas in NYNEX's region."[7] In this proceeding, however, the competitive conditions alleged by Bell Atlantic are broadly similar to those existing in other larger metropolitan areas. Indeed, Bell Atlantic's petition is almost identical to forbearance petitions that have been filed by SBC, U S West, and Ameritech. Immediate denial of Bell Atlantic's petition -- and the similar petitions filed by other ILECs -- will serve the public interest by allowing the Commission to focus its resources on CC Docket No. 96-262.

III. The Commission's Dominant Carrier Rules Remain Necessary

If the Commission does not deny Bell Atlantic's petition immediately on public interest grounds, but proceeds instead to conduct a full-scale forbearance analysis, such an analysis would show that Bell Atlantic's petition fails to satisfy Section 10's three-part test. In particular, this analysis would show that the Commission's dominant carrier rules remain necessary to ensure that Bell Atlantic's special access rates and practices are just, reasonable, and not unreasonably discriminatory, and that Bell Atlantic's petition therefore fails to satisfy the Section 10(a)(1) and 10(a)(2) criteria.

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[7]In the Matter of NYNEX Telephone Companies Petition for Waiver, Memorandum Opinion and Order, 10 FCC Rcd 7445, 7455 (1995).

A. Bell Atlantic Continues to Possess Market Power

According to Commission precedent, the price cap and dominant carrier tariffing regulations can be eliminated (in the case of price cap regulation) or replaced by less onerous regulation (in the case of tariffing) if a carrier is "non-dominant" (i.e., does not have market power in the relevant market).[8] In determining whether a carrier has market power, the Commission looks at such factors as demand elasticity, supply elasticity, the incumbent's pricing behavior, market share, and differences in cost structures. When these factors are evaluated with reference to special access services in the twelve jurisdictions that are the subject of Bell Atlantic's petition, it is clear that Bell Atlantic continues to possess market power.

1. Supply Elasticity

A key issue in the Commission's market power assessment is whether supply is sufficiently elastic to constrain Bell Atlantic's unilateral pricing decisions in the provision of high-capacity special access services, i.e., whether competitors have or could quickly acquire the capacity to take away enough business from Bell Atlantic to make unilateral price increases by Bell Atlantic unprofitable.[9] In its petition, Bell Atlantic argues that it lacks market power because "the vast majority . . . of its special access customers have a competitive alternative available through an array of

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[8]In the Matter of Motion of AT&T Corp to be Reclassified as a Non-Dominant Carrier, Order, 11 FCC Rcd 3271 (1995) (AT&T Reclassification Order); Comsat Order.

[9]See AT&T Reclassification Order, 11 FCC Rcd at 3303.

competitive facilities."[10] The reality, however, is that customers have no competitive alternatives to Bell Atlantic on the vast majority of special access routes in Bell Atlantic's territory.

a. Competitive Supply is Limited to a Small Number of Routes

On the vast majority of high-capacity special access routes in Bell Atlantic's region, the available competitive capacity is zero. CAP networks extend to at most a few hundred buildings in each of the states that are the subject of Bell Atlantic's petition. While there is no data available that would allow these CAP building counts to be compared to the total number of high-capacity special access locations in Bell Atlantic's territory, MCI WorldCom estimates that no more than 5 percent of the high-capacity special access locations in Bell Atlantic's region are connected to a competitor's network.[11]

Recognizing that competitors do not currently provide alternative sources of supply on most routes, Bell Atlantic attempts to argue that competitors could quickly acquire such a capability. It contends that "connecting [existing] networks to additional

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[10]Petition at 5.

[11]Data provided with U S West's Phoenix forbearance petition indicated that less than 6 percent of the "high capacity" locations in the Phoenix MSA were on CAP networks. See MCI WorldCom Opposition, CC Docket No. 98-157, October 7, 1998, at 11. Given that Bell Atlantic's petition encompasses not just more-competitive large metropolitan areas, but also smaller cities, suburban areas, and rural areas, it is highly unlikely that more than 5 percent of the high-capacity special access locations in the twelve jurisdictions that are the subject of Bell Atlantic's petition are on a CAP network.

buildings is both technically feasible and economically justifiable where sufficient demand has been established"[12] and claims (incorrectly, in MCI WorldCom's view) that "the approximate cost to expand 2000 feet in an urban area (where special access demand is concentrated) is only $6,200."[13]

Bell Atlantic's estimate of the cost of adding a building to a CAP network is completely unrealistic. First, the construction cost estimate cited by Bell Atlantic -- approximately $3 per foot -- is more than an order of magnitude below the true cost. Second, Bell Atlantic has ignored entire cost categories, such as transmission equipment costs and building entrance fees, that are major components of the overall cost of adding a building to a CAP network. Even U S West, in its Seattle forbearance petition, estimated a building add cost almost ten times greater than Bell Atlantic's estimate.[14]

Moreover, there is no evidence in Bell Atlantic's petition to suggest that a significant fraction of the high-capacity special access locations in Bell Atlantic's territory are close to existing CAP rings. MCI WorldCom, the largest CAP, does not have any facilities at all in many of the cities encompassed by Bell Atlantic's petition. And, even in the cities where MCI WorldCom does have some facilities, there are

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[12]Petition at 6.

[13]Id.

[14]Petition of U S West Communications, Inc. for Forbearance, CC Docket No. 99-1, December 30, 1998, Power Engineers Inc. Study at 40. U S West estimated the cost of adding a building between 1,000 to 2,000 feet to average $46,848, or eight times greater than Bell Atlantic's estimate of $6,200 for adding a building 2,000 feet from a fiber ring. As MCI WorldCom discussed in its Opposition to U S West's petition, even U S West's figure underestimates the true cost by a significant margin.

numerous submarkets where MCI WorldCom has not built facilities. Expanding its network to serve these locations would require MCI WorldCom to construct entirely new fiber rings at a cost of millions of dollars per ring.

The reality is that there is little prospect that competitors "could quickly acquire" capacity on the special access routes that they do not currently serve in the twelve states that are the subject of Bell Atlantic's petition. Billions of dollars in investment capital would be necessary for CAPs to build out their networks on these routes and to do so sufficiently rapidly to constrain Bell Atlantic's special access pricing. In addition to the financial barriers, CAPs would face the task of planning and engineering these new links, negotiating new rights of way, obtaining necessary permits, and negotiating with building owners.

In no respect is the supply elasticity for high-capacity services in Bell Atlantic's region comparable to the supply elasticity the Commission found in the AT&T or Comsat nondominance proceedings. In the AT&T nondominance proceeding, the record showed that AT&T's competitors could immediately absorb 15 percent of AT&T's total switched demand, could absorb one-third of AT&T's capacity with existing equipment, and could absorb two-thirds of AT&T's capacity within a year after investing only $660 million.[15] By contrast, Bell Atlantic's competitors currently serve only a fraction of Bell Atlantic's high capacity locations, can absorb zero demand on most routes, can provide service to additional locations only by constructing new facilities, and can address a

[15] AT&T Reclassification Order, 11 FCC Rcd at 3303.

significant fraction of Bell Atlantic's high capacity market only by making investments that are prohibitive.

b. CAP Services Provided Via Collocation Constrain Incumbent Pricing Only to a Limited Extent

Bell Atlantic suggests that an evaluation of competitive supply must include special access customers served via collocation arrangements. Bell Atlantic states, for example, that "competitors use collocated facilities in Bell Atlantic central offices to provide competitive special access from the central office to a long distance point of presence, even when the competitors do not have facilities connecting to an individual customer."[16] Bell Atlantic also provides data purporting to show that, in several LATAs, a significant percentage of "DS-1 equivalent channels" are addressable via CAP collocations.[17] This data is apparently the basis for Bell Atlantic's claim that competitors "have facilities in place that allow them to reach customers who account for approximately 90 percent of the special access services that Bell Atlantic provides."[18]

Competitive special access services provided through collocation at Bell Atlantic offices provide only a limited alternative source of supply. As an initial matter, collocation arrangements allow the replacement of only a portion of a special access circuit. Typically, MCI WorldCom can only find competitive supply for the portion of a

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[16]Petition at 6.

[17]Attachment C at 24-25.

[18]Petition at 1.

special access circuit between its POP and the Bell Atlantic serving wire center (a "channel termination," sometimes referred to as the "entrance facility") -- and even this competitive supply exists only in the larger cities. It is much less common for MCI WorldCom to find competitive alternatives for the interoffice portion of a special access circuit because CAPs have typically collocated in only a small fraction of the end offices in each city; in the twelve jurisdictions that are the subject of Bell Atlantic's petition, only 13 percent of Bell Atlantic offices have collocations.[19] And, even where CAPs have built out their network to a Bell Atlantic end office, Bell Atlantic continues to

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[19]According to data Bell Atlantic has filed in response to the Commission's 3Q98 local competition survey, only 13.44 percent of Bell Atlantic offices have operational collocations:

Jurisdiction	# with collo	# w/o collo	total offices	% with collo
DC	4	12	16	25.00%
DE	11	22	33	33.33%
MD	19	187	206	9.22%
MA	38	245	283	13.43%
NH	8	109	117	6.84%
NJ	29	177	206	14.08%
NY	73	449	522	13.98%
PA	68	320	388	17.53%
RI	7	23	30	23.33%
VT	7	82	89	7.87%
VA	19	196	215	8.84%
Total	**283**	**1822**	**2105**	**13.44%**

Source: 3Q98 local competition reports, lines 41-42.

provide the bottleneck multiplexing[20] and end user channel termination (the segment of a special access circuit between the LEC end office and the end user's premises).

Because Bell Atlantic continues to provide, at a minimum, the bottleneck multiplexing and end user channel termination facilities, circuits provided via collocation can provide only a limited check on Bell Atlantic's pricing of special access circuits. While collocation may allow competitive supply for the entrance facility between the IXC POP and the serving wire center or, for a limited number of end offices, for interoffice mileage, this competitive supply cannot constrain pricing for the circuit as a whole. Bell Atlantic's continuing bottleneck control of the multiplexing and end user channel termination elements allows it to raise the prices for these elements (and, consequently, for the circuit as a whole) to supracompetitive levels, even when the entrance facility (or entrance facility and interoffice mileage) is provided by a CAP.

In any event, Bell Atlantic's claim that a significant share of "DS-1 equivalent channels" are addressable by collocated wire centers may overstate the extent of competitive network scope. First, the existence of a collocation arrangement does not necessarily demonstrate that there is competitive supply for entrance facility or interoffice mileage; some new entrants have collocated in ILEC end offices without

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[20]Typically, CAPs cross-connect to Bell Atlantic facilities at the DS3 level; MCI WorldCom must then obtain DS3/DS1 multiplexing from Bell Atlantic in order to provide T1 special access service to end users. CAPs do not offer multiplexing services because the installation of multiplexing equipment and associated cross-connect frames in collocation cages would consume too much floor space to be practical under existing collocation space restrictions.

actually building competitive fiber facilities to these offices.[21] Second, it is not clear what Bell Atlantic means by a "channel," and how it has determined when that channel is "addressable." If Bell Atlantic is measuring the percentage of all channel terminations that are served by offices with collocation, and not just the percentage of end user channel terminations that are served by offices with collocations, then Bell Atlantic would be giving disproportionate weight to the very high-capacity "entrance facility" channel terminations between Bell Atlantic serving wire centers and IXC or Internet Service Provider (ISP) POPs. Because Bell Atlantic would count each of these channel terminations as a very large number of DS-1 equivalent channels,[22] Bell Atlantic's statistics would then show a significant portion of the market to be addressable through collocation, even if CAPs had collocated only in the serving wire center and were therefore providing competitive supply for only the small IXC/ISP POP-to-serving wire center segment of special access circuits.

2. Bell Atlantic's Pricing Behavior

The Commission has, on various occasions, examined the incumbent's pricing behavior to determine whether such pricing behavior was consistent with declining

[21]This has been the approach of several new "Data CLECs" that are planning to offer xDSL services.

[22]Some IXCs use SONET OC-3 or OC-48 services for this channel termination.

market power. In the AT&T nondominance proceeding, for example, the Commission noted that AT&T's Basket 1 API was 6.2 percent below the PCI.[23]

Bell Atlantic's pricing behavior is consistent with a carrier that continues to possess market power. Bell Atlantic continues to price its trunking basket services at the maximum permitted by the price cap rules. Indeed, in the most recent annual access filings, when the Commission's rules required Bell Atlantic to target all X-Factor reductions to the Transport Interconnection Charge (TIC),[24] and none to the High-Cap service categories, Bell Atlantic actually increased its interstate high-capacity rates.[25] Obviously, these price increases are inconsistent with Bell Atlantic's claims of growing competition. There is absolutely no evidence that the cost of providing high-capacity

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[23] AT&T Reclassification Order, 11 FCC Rcd at 3314.

[24] 47 C.F.R. §61.47(I).

[25] In their 1998 annual access filings, both Bell Atlantic North (NYNEX) and Bell Atlantic South proposed increases in their "High Cap & DDS" service category SBIs:

NYNEX:

	Existing SBI	Proposed SBI
High Cap & DDS	78.6927	80.2548

Source: NYNEX Transmittal No. 507, Chart IND-1, columns (G), (C), Line 300.

Bell Atlantic:

	Existing SBI	Proposed SBI
High Cap & DDS	71.6207	73.5582

Source: Bell Atlantic Transmittal No. 1059, Chart IND-1, cols. (G), (C), Line 300

services is increasing; indeed, there is substantial evidence that the cost of providing high-capacity services is declining.[26]

3. Market Share

Bell Atlantic contends that "by the beginning of 1998, competitors already had won over 30% of the high capacity special access business, and as much as 50% in key business centers."[27] It argues that these market share figures show that "competitors are actively operating and winning customers."[28]

Bell Atlantic's market share figures are misleading because they are based on "DS1 equivalents," an approach that has the effect of attributing greater share gains to CAPs than if a revenue-based market share measure is used. The "DS1 equivalent" measure overstates CAPs' competitive inroads because it weights the type of facility for which ILECs have faced some competition — DS3 or SONET entrance facilities — more heavily than if a revenue measure were used. When measured on a "DS1 equivalent circuit" basis, a DS3 entrance facility circuit counts the same as 28 interoffice

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[26]The growing use of HDSL technology is reducing the cost of provisioning DS1 circuits. See Fiber Deployment Update - End of Year 1997, Industry Analysis Division, at 20; Table 8.

[27]Petition at 7.

[28]Id.

DS1s or DS1 channel terminations. But when measured on a revenue basis, entrance facilities are much less significant.[29]

"DS1 equivalent circuit" market share measures obscure Bell Atlantic's continued dominance of the more significant (in revenue terms) multiplexing, channel mileage, and end user channel termination elements. While MCI WorldCom has been somewhat successful in finding alternatives to Bell Atlantic's DS3 or SONET entrance facilities, Bell Atlantic's facilities continue to represent, in the aggregate, over 80 percent of MCI WorldCom's high-capacity costs in the twelve jurisdictions that are the subject of Bell Atlantic's petition. At this level, Bell Atlantic's market share is inconsistent with its claim of lost market power. In the AT&T Reclassification Order, the Commission found that AT&T's market share had fallen to 55.2 percent in terms of revenues and 58.6 percent in terms of minutes.[30]

4. Cost Structure, Size and Resources

As the incumbent provider of special access services, Bell Atlantic enjoys several cost advantages. First, as the Commission has observed, CAPs are attempting to enter a

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[29]The fixed per-DS1 cost of a DS3 is significantly less than the cost of a DS1. Furthermore, interoffice circuits also incur substantial mileage charges.

[30]AT&T Reclassification Order, 11 FCC Rcd at 3307. MCI WorldCom is not suggesting that 55.2 percent is an appropriate indicator of reduced market power in the access market. The Commission recognized in the AT&T Reclassification Order that a 55 percent market share was "not incompatible" with a competitive market only "in markets with high supply and demand elasticity." AT&T Reclassification Order, 6 FCC Rcd at 5890 ¶51. Given the highly route-specific nature of competitive alternatives in the access market, and the correspondingly inelastic supply, a 55.2 percent market share figure would be an indicator of continued ILEC dominance of the access market.

market that is dominated by the incumbent provider, and may not have attracted a sufficient amount of business to achieve economies of scale.[31]

Second, one of the most important factors inhibiting CAPs from expanding their networks to serve additional buildings is the refusal of most landlords to allow CAPs to provide service in their building without payment of compensation — compensation that is almost never demanded from the ILEC. This places CAPs at a competitive disadvantage in terms of the cost of providing service. Furthermore, the CAPs must make a difficult decision regarding the allocation of scarce capital. Ideally, given the necessity of paying building owners, the CAP would prefer to make the commitment to enter a building only after obtaining contracts to provide service to customers in that building. But given that the process of obtaining authority to enter a building after signing up a new contract may take months, CAPs may risk capital by committing to certain buildings prior to having a signed customer contract. Others will wait for the customer contract, but the resulting lengthy time for delivery of service will make the sales efforts more difficult.

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[31]In the Matter of Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, Order Concluding Investigation and Denying Application for Review, 12 FCC Rcd 19311, 19337 (1997) (SWBT RFP Tariff Rejection Order).

B. Dominant Carrier Regulation is Necessary to Ensure that Bell Atlantic's Special Access Rates and Practices are Just, Reasonable, and Not Unreasonably Discriminatory

In order to satisfy the first statutory criterion of Section 10, Bell Atlantic is required to demonstrate that application of the Commission's price cap, tariffing, and rate averaging rules is not necessary to ensure that its rates and practices are just, reasonable, and not unreasonably discriminatory. Because, as discussed above, Bell Atlantic continues to possess market power in the provision of high-capacity services in the twelve jurisdictions that are the subject of its petition, the Commission should conclude that Bell Atlantic has failed to satisfy the Section 10(a)(1) criterion. The Commission has previously found that its price cap rules (or other forms of rate regulation) and dominant carrier tariff rules are necessary as long as a carrier possesses market power.[32]

It is clear that the Commission's price cap and tariff rules remain necessary to ensure that Bell Atlantic's rates are just and reasonable. Because there are no competitive alternatives on the vast majority of high-capacity routes in the twelve jurisdictions, Bell Atlantic has the ability and incentive to charge rates that are not just and reasonable on these routes. Bell Atlantic's continued at-cap pricing demonstrates that the Commission's price cap is the only constraint on Bell Atlantic's pricing of special access services, and that it is therefore not true that "[t]he market has long since passed the point where it needs regulatory price controls,"[33] as Bell Atlantic claims. To

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[32]Comsat Order at ¶144.

[33]Petition at 4.

prevent Bell Atlantic from overcharging access customers, the Commission must continue to apply its price cap rules.[34]

The potential for supracompetitive pricing is even more significant outside of the central business districts of major cities. In contrast to the other ILECs that have filed forbearance petitions, Bell Atlantic is asking for relief on a statewide basis, not just in larger cities. Bell Atlantic essentially admits that there is no competitive supply in smaller cities, suburban areas, and rural areas, but contends that "[l]arge purchasers of special access services [can] leverage the buying power they have in urban markets, where there are multiple suppliers, and play the carriers off against each other, in order to receive price breaks on special access services in all geographic areas."[35] This argument is without merit; essentially, Bell Atlantic is saying that it will offer reasonable special access rates in suburban and rural areas to only those customers that also agree to purchase its special access services in the central business district. Bell Atlantic apparently intends to charge unreasonably high rates in suburban and rural areas to customers that choose to purchase special access services in urban areas from a CAP (or customers that only purchase special access service in an area without competitive supply).

The Commission must also continue to apply its dominant carrier tariff rules. The tariff rules' advance notice and cost support requirements permit Bell Atlantic

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[34]In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd 6786, 6787 (1990).

[35]Attachment B at 5.

customers and the Commission to challenge potentially unlawful rates before they become effective.[36]

Similarly, the rate averaging requirements remain necessary to ensure that Bell Atlantic's rates for high capacity services in the twelve jurisdictions are not unreasonably discriminatory. Absent the rate averaging requirement, Bell Atlantic could offer rates on routes that are subject to competition that are not generally available to similarly situated customers on routes not subject to competition. The Commission has previously found that such practices are unreasonably discriminatory in violation of Section 202(a) of the Act.[37]

C. Dominant Carrier Regulation is Necessary for the Protection of Consumers

In order to satisfy the second statutory criterion of Section 10, Bell Atlantic must demonstrate that application of the Commission's price cap, tariffing, and rate averaging rules is not necessary for the protection of consumers. Because the record shows that, absent regulation, Bell Atlantic would have the ability and incentive to charge access rates that are not just and reasonable or are unreasonably discriminatory, and thus increase prices and distort competition in the interexchange market, the Commission's dominant carrier regulations remain necessary for the protection of consumers.

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[36]Comsat Order at ¶153.

[37]In the Matter of Southwestern Bell Telephone Company Tariff F.C.C. No. 73, Memorandum Opinion and Order on Reconsideration, 13 FCC Rcd 6964, 6965 (1998).

V. Conclusion

The Commission should act immediately to deny Bell Atlantic's petition for forbearance on the grounds that the state-specific relief that Bell Atlantic seeks would be contrary to the public interest and thus fails to satisfy the Section 10(a)(3) public interest criterion. If the Commission proceeds instead to conduct a full-scale forbearance analysis, then it should find that Bell Atlantic continues to possess market power in all twelve jurisdictions and that the Commission's dominant carrier rules are necessary to ensure that Bell Atlantic's high-capacity special access rates and practices are just, reasonable, and not unreasonably discriminatory.

Respectfully submitted,
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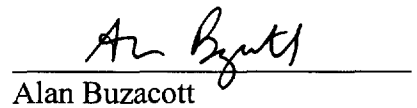
March 18, 1999

STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on March 18, 1999.



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CERTIFICATE OF SERVICE

I, Vivian I. Lee, do hereby certify that copies of the foregoing Opposition were sent via first class mail, postage paid, to the following on this 18th day of March, 1999.

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